

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Terry Hubbard,

Plaintiff,

v.

Daniel V. Abarca;
Maria D. Hernandez;
Endless One Corporation, a
California Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Terry Hubbard complains of Daniel V. Abarca; Maria D. Hernandez; Endless One Corporation, a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from cerebral palsy and uses a wheelchair for mobility.

2. Defendants Daniel V. Abarca and Maria D. Hernandez owned the real

1 property located at or about 114 N. Acacia Avenue, Compton, California, in
2 December 2018.

3 3. Defendants Daniel V. Abarca and Maria D. Hernandez own the real
4 property located at or about 114 N. Acacia Avenue, Compton, California,
5 currently.

6 4. Defendant Endless One Corporation owned the Super Bargain store
7 located at or about 114 N. Acacia Avenue, Compton, California, in December
8 2018.

9 5. Defendant Endless One Corporation owns the Super Bargain store
10 (“Store”) located at or about 114 N. Acacia Avenue, Compton, California,
11 currently.

12 6. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein,
17 including Does 1 through 10, inclusive, is responsible in some capacity for the
18 events herein alleged, or is a necessary party for obtaining appropriate relief.
19 Plaintiff will seek leave to amend when the true names, capacities,
20 connections, and responsibilities of the Defendants and Does 1 through 10,
21 inclusive, are ascertained.

22
23 **JURISDICTION & VENUE:**

24 7. The Court has subject matter jurisdiction over the action pursuant to 28
25 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 8. Pursuant to supplemental jurisdiction, an attendant and related cause
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights
2 Act, which act expressly incorporates the Americans with Disabilities Act.

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
4 founded on the fact that the real property which is the subject of this action is
5 located in this district and that Plaintiff's cause of action arose in this district.

6
7 **FACTUAL ALLEGATIONS:**

8 10. Plaintiff went to the Store in December 2018 to shop.

9 11. The Store is a facility open to the public, a place of public
10 accommodation, and a business establishment.

11 12. Paths of travel are one of the facilities, privileges, and advantages
12 offered by Defendants to patrons of the Store.

13 13. Although there were shelves and merchandise aisles open to customers
14 for shopping, the paths of travel in and throughout these merchandise aisles
15 were not accessible because the defendants had a practice of placing
16 merchandise and merchandise display on the route of travel restricting
17 passage to less than 36 inches in width.

18 14. In fact, the narrowest pathway is about 15 inches wide. This is simply
19 too narrow for plaintiff.

20 15. Transaction counters are another one of the facilities, privileges, and
21 advantages offered by Defendants to patrons of the Store.

22 16. The transaction counters at the Store were more than 36 inches in
23 height. In fact, one of the transaction counters was 42 inches high. A second
24 counter was 45 inches in height.

25 17. There was no lowered, 36 inch portion of the transaction counters at the
26 Store for use by persons in wheelchairs.

27 18. Currently, the transaction counters at the Store are more than 36 inches
28 in height.

1 19. Currently, there is no lowered, 36 inch portion of the transaction
2 counters at the Store for use by persons in wheelchairs.

3 20. Plaintiff personally encountered these barriers.

4 21. These inaccessible conditions denied the plaintiff full and equal access
5 and caused him difficulty, discomfort, and embarrassment.

6 22. Plaintiff plans to return and patronize the Store but is deterred from
7 visiting until the defendants remove the barriers.

8 23. The defendants have failed to maintain in working and useable
9 conditions those features required to provide ready access to persons with
10 disabilities.

11 24. The barriers identified above are easily removed without much
12 difficulty or expense. They are the types of barriers identified by the
13 Department of Justice as presumably readily achievable to remove and, in fact,
14 these barriers are readily achievable to remove. Moreover, there are numerous
15 alternative accommodations that could be made to provide a greater level of
16 access if complete removal were not achievable.

17 25. One common barrier removal project is modifying transaction counters
18 to make a portion of the counter accessible. This is a simple construction task,
19 well within the capabilities of any general contractor. The task can be
20 completed easily and for a modest price.

21 26. Plaintiff is deterred from returning and patronizing the Store because of
22 his knowledge of the barriers that exist. Plaintiff will, nonetheless, return to
23 assess ongoing compliance with the ADA and will return to patronize the Store
24 as a customer once the barriers are removed.

25 27. Given the obvious and blatant nature of the violations and barriers
26 alleged herein, the plaintiff alleges, on information and belief, that there are
27 other violations and barriers on the site that relate to his disability. Plaintiff will
28 amend the Complaint to provide proper notice regarding the scope of this

lawsuit once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

28. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

29. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D."
- c. A failure to make alterations in such a manner that, to the

1 maximum extent feasible, the altered portions of the facility are
2 readily accessible to and usable by individuals with disabilities,
3 including individuals who use wheelchairs or to ensure that, to the
4 maximum extent feasible, the path of travel to the altered area and
5 the bathrooms, telephones, and drinking fountains serving the
6 altered area, are readily accessible to and usable by individuals
7 with disabilities. 42 U.S.C. § 12183(a)(2).

8 30. The minimum clear width of an accessible route shall be 36 inches.
9 2010 Standards § 403.5.1.

10 31. Here, the failure to provide accessible paths of travel inside the Store is
11 a violation of the ADA.

12 32. Under the 2010 Standards, where the approach to the sales or service
13 counter is a parallel approach, such as in this case, there must be a portion of
14 the sales counter that is no higher than 36 inches above the floor and 36 inches
15 in width and must extend the same depth as the rest of the sales or service
16 counter top. 2010 Standards § 904.4 & 904.4.1.

17 33. Here, no such accessible counter has been provided in violation of the
18 ADA.

19 34. A public accommodation must maintain in operable working condition
20 those features of its facilities and equipment that are required to be readily
21 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

22 35. Here, the failure to ensure that the accessible facilities were available
23 and ready to be used by the plaintiff is a violation of the law.

24 36. Given its location and options, plaintiff will continue to desire to
25 patronize the Store but he has been and will continue to be discriminated
26 against due to the lack of accessible facilities and, therefore, seeks injunctive
27 relief to the barriers.
28

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 3 Code § 51-53.)

4 37. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 7 that persons with disabilities are entitled to full and equal accommodations,
 8 advantages, facilities, privileges, or services in all business establishment of
 9 every kind whatsoever within the jurisdiction of the State of California. Cal.
 10 Civ. Code § 51(b).

11 38. The Unruh Act provides that a violation of the ADA is a violation of the
 12 Unruh Act. Cal. Civ. Code, § 51(f).

13 39. Defendants’ acts and omissions, as herein alleged, have violated the
 14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
 15 rights to full and equal use of the accommodations, advantages, facilities,
 16 privileges, or services offered.

17 40. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 18 discomfort or embarrassment for the plaintiff, the defendants are also each
 19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 20 (c).)

21
 22 **PRAYER:**

23 Wherefore, Plaintiff prays that this Court award damages and provide
 24 relief as follows:

25 1. For injunctive relief, compelling Defendants to comply with the
 26 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 27 plaintiff is not invoking section 55 of the California Civil Code and is not
 28 seeking injunctive relief under the Disabled Persons Act at all.

1 2. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000.

3 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: December 31, 2018

CENTER FOR DISABILITY ACCESS

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9 By:



10 _____
11 Chris Carson, Esq.
12 Attorney for plaintiff
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